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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/127,256 07/31/98 ELKINS

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QM02/0615

EXAMINER

LEO, L

ART UNIT

PAPER NUMBER

3743

DATE MAILED:

06/15/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.  
09/127,256

Applicant(s)  
Elkins

Examiner  
Leonard R. Leo

Group Art Unit  
3743



☒ Responsive to communication(s) filed on Mar 20, 2000

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1, 3-6, 8-10, 12-20, and 22-24 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1, 3-6, 8-10, 12-20, and 22-24 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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The request filed on March 20, 2000 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/127,256 is acceptable and a CPA has been established. An action on the CPA follows. Claim 21 is cancelled, claims 1, 3-6, 8-10, 12-20 and 22-24 are pending.

The incorrectly filed declaration under 37 CFR 1.131 is considered as a declaration under 37 CFR 1.132. The declaration under 37 CFR 1.132 filed March 20, 2000 is insufficient to overcome the rejection of claims 1, 3-6, 8-10, 12-20 and 22-24 based upon Applicant's Prior Art Figure 2 in view of Haugeneder as set forth in the last Office action because:

The testimony of Michael A. Kast is opinion evidence. However, full consideration of Mr. Kast's "legal conclusion" of the nonobviousness of the combination of Applicant's Prior Art Figure 2 and Haugeneder has been made. Initially, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). All of Mr. Kast's statements hinge on Haugeneder not disclosing or teaching features or structures, which are already disclosed by Applicant's Prior Art Figure 2. Further, there is no requirement that any of the references must realize the same or any problem faced by applicant. Clearly, the secondary reference of Haugeneder teaches one of ordinary skill in the art to employ a plurality of dot matrix of attachments arranged into first and second imaginary lines crossing at 90 degrees for the purpose of achieving a desired heat exchange by providing optimum flow resistance and flow.

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-6, 8-10, 12-20 and 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's Prior Art Figure 2 in view of Haugeneder.

Applicant's Prior Art Figure 2 discloses all the claimed limitations except first and second lines intersecting at an angle of 70 to 110 degrees.

Haugeneder discloses a heat exchange panel comprising a first layer and second layer having a border seal; a first port 1 and second port 2; a plurality of dot matrix of attachments 3-6 arranged into first and second imaginary lines crossing at 90 degrees for the purpose of achieving a desired heat exchange by providing optimum flow resistance and flow (column 3, lines 43-50)..

Since Applicant's Prior Art Figure 2 and Haugeneder are both from the same field of endeavor and/or analogous art, the purpose disclosed by Haugeneder would have been recognized in the pertinent art of Applicant's Prior Art Figure 2.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ in Applicant's Prior Art Figure 2 first and second imaginary lines crossing at 90 degrees for the purpose of achieving a desired heat exchange by providing optimum flow resistance and flow as recognized by Haugeneder.

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Regarding claims 2, 7, 11 and 16, Haugeneder discloses the first and second lines intersect with the nominal direction of flow 8 at about 34 degrees (gleaned from Figure 1).

Regarding claims 3-5, 8-9, 12-14, 17-20 and 22-24, Applicant's Prior Art Figure 2 meets the claimed limitations.

Regarding claims 6-9, the method of manufacturing claims are believed met by the combination of Applicant's Prior Art Figure 2 and Haugeneder.

Regarding claims 10-14, the method of operating claims are believed met by the combination of Applicant's Prior Art Figure 2 and Haugeneder.

Regarding claims 15-19, to employ the device of the combination of Applicant's Prior Art Figure 2 and Haugeneder in a well known system (e.g. Elkins et al.) Requires only routine skill in the art.

No further comments, in addition to the above comments with respect to the declaration are deemed necessary.

All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center 3700 receptionist whose telephone number is (703) 308-0861.

Any inquiry concerning this communication should be directed to Leonard R. Leo whose telephone number is (703) 308-2611.



LEONARD R. LEO  
PRIMARY EXAMINER  
ART UNIT 3743

June 12, 2000